

STATE OF MINNESOTA

DISTRICT COURT

**COUNTIES OF CARVER
DAKOTA, GOODHUE,
LESEUER, MCLEOD,
SCOTT AND SIBLEY**

FIRST JUDICIAL DISTRICT

**IN RE: SOURCE CODE EVIDENTIARY
HEARINGS IN IMPLIED CONSENT
AND CRIMINAL MATTERS**

ORDER

Whereas, the Court has determined that numerous civil implied consent and criminal driving while impaired matters involve challenges to the accuracy and reliability of the test results obtained from tests conducted with the Intoxilyzer 5000EN breath testing instrument (the Intoxilyzer) based upon alleged defects in the source code that controls the operation of the Intoxilyzer (Source Code Challenges), and

Whereas, these Source Code Challenges involve complex issues of law and fact that may require lengthy hearings and will require significant judicial resources and time to process, hear and decide, and

Whereas, these Source Code Challenges are in need of and will benefit from coordination with other cases pending within this district and the oversight and consistency provided by the assignment of these cases to a single judge, and

Whereas, On July 16, 2009, a settlement providing access to the source code was approved by the Honorable Donovan Frank in the federal lawsuit initiated by the State of Minnesota against CMI of Kentucky, Inc., the manufacturer of the Intoxilyzer (the Federal Consent Order),

Now Therefore, The Court makes the following

ORDER

1. Pursuant to Minn. Stat. 484.69, Subd 3, in any civil implied consent or criminal driving while impaired case where a party obtains discovery of the Intoxilyzer source code, retains an expert and timely files the Non-Disclosure Agreement required by the Federal Consent Order, any evidentiary hearing to determine whether any defects in the source code affected the accuracy or reliability of the alcohol concentration test result obtained from tests administered with the Intoxilyzer shall be heard by First Judicial District Judge Jerome B. Abrams.

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2. Orders, notices, hearing dates and a list of cases assigned to Judge Abrams for hearing shall be posted on the First Judicial District Web Page <http://courtnet.courts.state.mn.us/1>.

3. Judge Abrams is authorized to consolidate any of these matters for hearing at his discretion where consolidation will promote efficient use of judicial resources and timely disposition consistent with the rights of the parties.

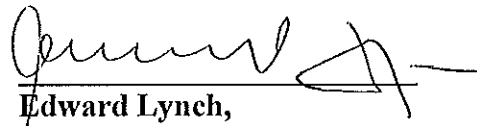
4. Judges and Court Administrators in the First District will assist in identifying and transferring to Judge Abrams all cases affected by this Order.

5. Judge Abrams is assigned to hear and decide only challenges to the accuracy and reliability of the test results obtained from breath tests administered with the Intoxilyzer based upon alleged defects to the source code. All other pre-trial issues shall be heard and decided prior to the transfer of the file to Judge Abrams.

6. Upon completion of the evidentiary hearing and the filing of the decision of Judge Abrams on the Source Code Challenge, the case shall be returned to and scheduled for final disposition in the originating county before any available judge.

August 6, 2009

BY THE COURT


Edward Lynch,
Chief Judge of the First Judicial

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